

Budget Officer

25 May 1949

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Definition of Workday with Relation to Holiday

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1. The memorandum for Comptroller General of the United States in regard to subject prepared by the Chief, [REDACTED] and forwarded to this office with your comments on memorandum dated 18 February 1949 has been reviewed and discussed at length with [REDACTED]

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2. The inquiry raised the case in point of [REDACTED] of this agency, whose regularly scheduled tour of duty began at 11:30 P.M. on Sunday and ended at 8 A.M. on Monday (including lunch period). During 1948, [REDACTED] was required to work on the days 22/23 February, 30/31 May and 4/5 July, each of which was a Sunday-Monday combination in which Sunday was an official holiday. In keeping with existing regulations and orders, this Agency ruled that the portion of work performed before midnight on each of the Sunday holidays entitled Mr. [REDACTED] to one half hour of holiday compensation for 22 February, 30 May and 4 July, but disqualified him for 7 1/2 hours of holiday compensation for work performed on the following Mondays. [REDACTED] indicated informally his desire to appeal the ruling on the ground that a single continuous shift should be regarded as work performed on a single calendar day and therefore compensated on these three occasions at the holiday rate.

3. The applicable basic law is Section 302, the Federal Employees Pay Act of 1945, as amended. This is amplified by Executive Order 9636, dated October 3, 1945, providing for observance of holidays falling on Sundays, which states in pertinent part:

"Section 3. In administering the provisions of law relating to pay and leaves of absence, the Monday referred to in section 2 of this order shall be treated as a holiday, subject to the following exceptions:

(a) In the case of employees whose regularly scheduled basic work week includes both the Sunday and the Monday referred to in section 2 of this order, either day, as determined by the head of the department, agency, or corporation concerned, but not both days, shall be treated as a holiday.

(b) In the case of employees whose regularly scheduled basic workweek includes the Sunday but not the Monday referred to in section 2 of this order, only the Sunday shall be treated as a holiday."

4. Administrative instructions of this Agency issued prior to 24 June 1948 provided that holiday work should be compensated at "double time" provided prior approval was secured from the appropriate officer. The instructions were slightly amplified on 24 June 1948 to state that "an employee can only be paid holiday rates for that portion of his tour of duty which actually falls within the 24 hour holiday period, and not to exceed 8 hours". Notices Nos. 3-48 and 12-48 issued by the Deputy Executive on 2 February and 6 May 1948 respectively provided that any employee whose work shift included both Sunday and Monday would receive compensation for the work performed on Sunday.

5. During the discussions mentioned above, it was decided that "shift" meant a component division of the workweek which referred to an uninterrupted tour of duty that could be wholly contained within one calendar day or begin on one calendar day and end on another, but which would still be a "shift" as long as it was continuous. Since the designation of Sunday as a holiday clearly worked a hardship on [REDACTED] the possibility of presenting the question to the Comptroller General was discussed. The opinion of the Comptroller General in 25 Comp. Gen. 475 eliminated the possibility of making a holiday payment on any basis other than a percentage-wise apportionment to the work actually performed on either Sunday or Monday. The notices issued by the Deputy Executive were designed to cover the case of the split shift and since they provide for a shift on both Sunday and Monday it would be somewhat difficult to say that the "shift" prescribed referred only to a full shift falling within the calendar limits of either day. In view of this doubt, it does not seem feasible to submit the question to the Comptroller General, and we therefore concur in your conclusion.

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6. The inequity for employees in [REDACTED] situation could be remedied by an amendment [REDACTED] by providing that when the regular workweek includes Sunday and Monday, then that day within which the major portion of the work falls will be officially observed as the holiday for that particular employee. Since the employee could not be paid the holiday rate for more than eight hours, this would seem to be well within the intent of the Executive Order. However, the administrative burden of processing a split payroll may overbalance a desire to preserve the maximum benefits to which every employee is entitled under the law. It is possible, of course, that such inequities would be equalized over a period of time, and the general question is presented for your consideration.

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CWP/hw

cc: Central files (subject)

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Legal Division